IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 1148 of 2001()

SC.458/1999 of ADDL.SESSIONS COURT, KOZHIKODE
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APPELLANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

RESPONDENTS:
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1. ONAKKAN, S/O.CHOYI,
VILLIAPPALI AMSOM DESOM VADAKARA TALUK,
KOZHIKODE.

2. KALLIANI, W/O.ONAKKAN --DO--

3. NARAYANI, W/O.CHATHU, --DO--

4. CHATHU, S/O.KANNAN, --DO--

5. DEVI, W/O.KRISHNAN, --DO--

6. REENA, W/O.NARAYANAN,
IRINGAL AMSOM DESOM --DO--

7. MATHATH DINESAN,
S/O.BALAN,
VILLIAPPALI AMSOM DESOM --DO--

BY ADV. SRI.V.G.ARUN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON 24/09/2007 DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.1148 of 2001-D

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Dated this the 24th day of September, 2007

J U D G M E N T

The State has filed the appeal to set aside the order of acquittal of accused Nos.2 to 8 in S.C.No.458/1999 by the court of Additional Sessions Judge, Kozhikode. They were charge sheeted with respect to the offences under Sections 304B and 498A read with Section 34 of the Indian Penal Code. The case against accused No.1 was split up as he was absconding. It is contended that the evidence of PWs.1, 2, 3 and 5 are credible and the court ought to have relied on the evidence of the above witnesses rather than discarding the same on irrelevant contradictions and that the interference of the court are totally baseless.

2. The prosecution case is that the deceased Ashalatha, who was married to accused No.1 on 18/10/1994 was consistently ill-treated demanding more dowry and directing her to bring 25 sovereigns of gold ornaments more and she was driven to suicide by hanging in the evening of 13/09/1997. She is survived by a child.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 16, Exts.P1 to P20 and MOs.1 to 5. The defence examined DWs.1 and 2 and got marked Exts.D1 to D32.

4. The case of the defence and the version of the accused when questioned under Section 313 Cr.P.C is that after December 1994 when Ashalatha was pregnant and accused No.1 left for the Middle East, she developed mental illness. After delivery as per the custom she was taken to the matrimonial home but again she showed signs of mental illness and she was taken to her parental home. She underwent psychiatric treatment. When accused No.1 returned from the Middle East in 1997 also there was no change in the mental status of Ashalatha. Accused No.1 wanted her to be subjected to expert treatment but her parents were not willing. Thereafter, there was some mediation and she was taken to the matrimonial home. Subsequently, she was treated by Dr.P.V.Mohanachandran and she was under treatment till she committed suicide.

5. It is the version of PW.1-the father, PW.2-a neighbour, PW.3 said to be a mediator and PW.5-the mother that was relied on by the prosecution. It was found by the court below that the evidence of

PW.1, the father would disclose that he had no direct knowledge as to the ill-treatment undergone by the deceased at the hands of her husband and other relatives of the husband with respect to the demand for dowry. He has stated that he came to know of the facts from his wife after the death of his daughter. It is stated by PW.1 that he came to know that from the next day of the marriage her husband used to harass her demanding gold ornaments of 25 sovereigns more and that she was not allowed to wear the ornaments when she came to her house for the first feast immediately after the marriage. It was found that his version is contradictory to the statement to the police that he was aware of the above fact even prior to the death of his daughter and that he had told her husband that he would not be able to meet the demand for gold at the time. He has stated about mediation in the matter and it was only at the insistence of the mediators, one Valappil Pokkan and Nanu (PW.3) that he had left his daughter at the house of the accused. It was brought out that he had not stated before the police that it was only at the insistence of the mediators that he left his daughter at her matrimonial home. PW.1 has also stated that when he himself along with PW.3 went to invite the couple for Onam, the absconding accused No.1 took PW.3 to the office room at their house and conveyed the demand for 25 sovereigns

of gold ornaments more. This was disclosed by PW.3 to PW.1 on their way back. It is brought out that such a statement was not made by PW.1 before the police officials who questioned him that is PW.10 and PW.16. PW.1 has stated that after delivery he had taken his daughter along with the child and PW.5-the mother to the house of the accused and at that time the accused Nos.1 to 3 herein, i.e., the parents and sister of the husband abused them and sent them back. It was brought out in the cross-examination of PW.1 that he has not made such a statement before PW.10, the Investigating Officer who questioned him at first. Thereafter, when PW.16, D.Y.S.P of C.B.C.I.D questioned him also he had not stated about the above incident. It was brought out that his case before the police was that he had gone to the house of the accused along with his son Anoop to invite them for Onam but accused No.1 the husband did not turn up. He had no case before the police that at that time accused No.1 demanded gold ornaments.

6. It was also found that the evidence of PW.5 the mother is also not consistent. According to her when her daughter informed her of the demand for 25 sovereigns more, when she came to the parental home immediately after marriage, the daughter had told her that it

would not be possible for her to live unless 25 sovereigns of gold ornaments were also given to her. According to her she did not reveal that fact to PW.1 at that time. She had also stated before the police that after the delivery and after sometime she had gone to the house of the accused and at that time her daughter told her that accused No.4, Chathu, the sister's husband of accused No.1, had attempted to commit rape on her and so she had taken her daughter back to the parental home. The above was also not revealed to PW.1. She could not recollect the alleged date of attempted rape and also the details of the same. It was observed by the court below that the suppression of the above from her husband is not normal human conduct. The fact brought out that PW.1 did not inquire about his daughter's long stay at the parental home till the mediation took place was also not the normal conduct of a father, it was observed by the court below. It was found that there was no demand from the accused herein for gold ornaments at the time of marriage, prior to marriage or after marriage.

7. The evidence of PW.2, the neighbour is that Mukundan, accused No.1 used to telephone to her house from abroad for talking with the deceased as there was no telephone connection in the house of PW.1.

She has stated that after attending the telephone, the deceased used to be gloomy and when she inquired, she was told that her husband was demanding 25 sovereigns of gold ornaments more. According to PW.2, she had also attended the telephone and that Mukundan, i.e., the husband demanded for atleast the gold chain of the mother of the deceased. But it was brought out that she had not mentioned the above fact to the police officials, that is, PWs.10 or 16 when they questioned her. It is her case that she had advised the deceased to send greetings to her husband and accordingly, the deceased had sent the greetings to her husband, which was also not stated to the police. The court below has noted that PW.2 was made to depose in the above fashion as Exts.D1 and D2 greeting cards sent to accused No.1 by the deceased were put to PW.1 when he was cross-examined. The court below rejected her evidence as it appeared that the same is tutored.

8. PW.3 the mediator has spoken about the mediation in June 1997. It is his case that after mediation, it was at the insistence of Valappil Pokkan and himself that PW.1 took his daughter to the house of the accused. It was brought out that he has not so stated before the police. He has also stated that when himself and PW.1 went to the house of the accused, Mukundan took him to the office room and

wanted PW.1 to give 25 sovereigns of gold ornaments more which he disclosed to PW.1 on their way back. According to him the above incident took place when PW.1 and himself went to the house of the accused to invite the couple for Onam, just nine days prior to the incident. It was found that his statement to the police is not the same as he has stated before the court. He had told to the police that he went to the house of Mukundan thrice and it was on one such occasion when he went along with PW.1 that Mukundan demanded the gold ornaments. It was brought out that he has stated before the police that he came to know from PW.1 that PW.1 along with his son Anoop had gone to the house of the accused to invite the couple for Onam.

9. PW.1 and PW.5, the parents of the deceased have admitted that after delivery, the deceased developed symptoms of mental illness and she was treated by PWs.14 and 15 Psychiatrists. But the above aspect was not disclosed to the Investigating Officer. PWs.14 and 15 were examined as additional witnesses on application of the prosecution. It was also found that the brother of PW.1 Krishnan committed suicide recently. It was also brought out that only when the husband came to the native place the deceased used to live in the matrimonial home.

The above fact was taken note by the court below as the harassment, if any, can only be when accused No.1 came from abroad. Exts.D1 and D2 greetings, admitted by PW.1, were in the handwriting of the deceased. Ext.D1 was sent in connection with the marriage anniversary. It was sent when she was pregnant and was residing in the house of PW.1. Ext.D2 was sent in December 1995 in connection with the new year. It is mentioned therein that she wanted to see him. The court has relied on the above documents to infer that she was not subjected to cruelty by the first accused husband at least. The fact that accused No.1 used to make telephone calls to the deceased and that PW.1 has admitted that accused No.1 used to send letters to the deceased but no letters were produced by the parents of the deceased was noted by the court below and that the non production of the letters is only to suppress the fact that the deceased was in cordial terms with accused No.1.

10. It was also admitted by PWs.1 and 5 that after delivery on account of the mental disorder, the deceased was admitted in the hospital of Vatakara and was treated by PW.14. It was also brought out that as they were not satisfied with the treatment, she was taken to PW.15. It is also brought out from PW.5 that the deceased prior to

the marriage was found to be moody and she did not write her final B.A examination. But PW.1 has stated that the deceased had appeared for the final B.A examination. It was also brought out from the evidence of PW.5 that her mental illness increased after delivery. That was relied on by the court below to find that she had mental illness prior to the marriage also.

11. PW.5, the mother has stated that for the first feeding ceremony of the child at Guruvayur, the deceased could not attend the function and that she remained in the room with PW.1. According to PW.5 at that time the deceased could not attend the function as it was her menstrual period. But the court found it unusual for PW.1 to remain with his daughter as in the usual course it would have been a lady to remain with the deceased. The defence case that at that time the deceased was having mental illness was found more credible.

12. It was also noted that it was at the instance of accused Nos.1 to 3 herein that is the in-laws and the sister in law of the deceased that the mediation took place and it was on the basis of the understanding in the mediation that on receiving telephone call of Mukundan from Bahrain that PWs.1 and 5 took the deceased and the child to the

marital home although at first PWs.1 and 5 were not willing as Mukundan insisted for bringing 25 sovereigns of gold ornaments more. But according to PWs.1 and 5 it was at the insistence of the mediators that they took the deceased and the child to the house of the accused. But this part of evidence was not mentioned to the police. It was found that the accused herein was interested in continuing the marital relations of the deceased and the Mukundan.

13. The evidence of DW.1 the Psychiatrist who treated the deceased during the period when she committed suicide and Ext.D31 prescription dated 18/08/1997 was found to be very relevant. The doctor had stated that the deceased was suffering from episodic disorder. His opinion to the effect that the mental depression is not the one commenced after delivery. On 01/09/1997, also he had examined the deceased. It has to be noted that the death was on 13/09/1997. It was found that the deceased committed suicide when she was under psychiatric treatment.

14. Ext.P3 letter said to have been written by the deceased after the incident when herself, father and mother were humiliated by the accused Nos.1 to 3 herein was not relied on as it was found that the

same was produced before the Investigating Officer after ten days of the incident and that the same was produced before the court along with the final report. Further the court found that on a perusal of Ext.P4 note book, which is said to be that of the deceased when she was studying and the handwriting in Exts.D1 and D2 greeting cards and the handwriting in Ext.P3 did not appear to be similar. Ext.P3 mentions about the incident that took place prior to 19/10/1996 when herself and her parents were humiliated by the accused when they went to the matrimonial home as directed by her husband from abroad over telephone. The letter is dated 19/10/1996. As already noted the date of death is after about one year of the date of the letter and the court found that the same cannot be relied on to establish the allegations under Section 304B or Section 498A I.P.C.

On a perusal of the evidence adduced in the matter, I find that discrepancies pointed out by the court below with respect to the evidence of PWs.1, 2, 3 and 5 exist and are very prominent. In the circumstances and in view of the finding as to the alleged handwriting of the deceased in Ext.P3 letter, I find that setting aside of the order of the court below acquitting the accused would not be proper. It is to be noted that Ext.P1 was not subjected to expert opinion. On a

perusal of Exts.P3, P4, D1 and D2, I find that it would be hazardous to arrive at a conclusive finding as to the identity of the handwriting by comparison by court. Evidently, as held by this court in **Aravindakshan Nair K.R. v. Essen Bankers and others [2007 (3) ILR 312]** relying on the Supreme Court decisions the proper course is to obtain expert opinion. It is also to be taken note of the principle that the presumption to innocence of the accused, is fortified from the fact of the acquittal by the trial court. In view of the constraints of the appellate jurisdiction against acquittal, I find that interference is not called for. The appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.1148 of 2001-D

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----th September, 2007